




State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/05/2013 (Per: PJK)

Appendix A ... segment I

Appendix A  The drafting file for LRB 13-0016 (used to create 13-3081)
(Representative Kleefisch)

Appendix B  The drafting file for LRB 11-3501 (used to create 13-0016)
(Representative Kleefisch)

has been transferred to the drafting file for

2013 LRB-3081

(Representative Kleefisch)

2013 DRAFTING REQUEST

Bill

Received: **9/4/2012** Received By: **pkahler**
Wanted: **As time permits** Same as LRB:
For: **Joel Kleefisch (608) 266-8551** By/Representing: **Rick Braun**
May Contact: Drafter: **pkahler**
Subject: **Dom. Rel. - child support/maint.** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Kleefisch@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Calculation of child support; changes for high-income payers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	pkahler 10/19/2012	scalvin 9/13/2012	jfrantze 9/14/2012	_____	srose 9/14/2012		State S&L
/P2	pkahler 12/12/2012	scalvin 10/31/2012	rschluet 11/1/2012	_____	sbasford 11/1/2012		State S&L
/P3	pkahler 1/22/2013	scalvin 12/14/2012	rschluet 12/14/2012	_____	srose 12/14/2012		State S&L
/1	pkahler	scalvin	jfrantze	_____	sbasford	srose	State

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	6/12/2013	2/4/2013	2/4/2013	_____	2/4/2013	2/27/2013	S&L
/2		scalvin 6/12/2013	phenry 6/12/2013	_____ _____	mbarman 6/12/2013	mbarman 6/12/2013	State S&L

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1/2 sac
06/12/2013
6/10 ph
ph/jm

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jacket " / 2 "

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sac

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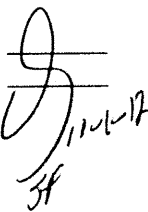
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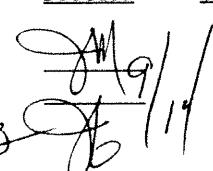
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<END>

Kahler, Pam

From: Braun, Rick
Sent: Monday, August 20, 2012 10:22 AM
To: Kahler, Pam
Subject: Child support bill from last session ... Rep Kleefisch's office.

Pam:

I replaced Stephanie Kundert in March. We are looking to re-introduce what was numbered LRB 3501 last session regarding child support payment calculations.

The constituent for whom we are working on this has a few more concerns. They are as follows:

- ✓ Add to s. 767.59 that child support judgments may be revised regardless of whether child support was determined by stipulation, court order or arbitration
 - ? Child support shall only be based on net income after income taxes (or imputed income if person is working less than capacity) but not on assets. *not now, is it? do you mean a reduction from assets?*
 - ? You may want to kill off the portion of deviation statute (767.511 (1m)) that allows the Court to order support in excess the percentage standards. *you mean prohibit it?*
 - ? (You may want to amend s. 767.59 (1c) to require a court to modify child support upon a showing of a change of circumstances (replacing "may" with "shall" in the last sentence) for child support cases. Perhaps the existing language of 767.59 (1)c should still apply to subsection 2. leaving the may to apply. *revision may not be warranted, even if sub of cur*
note ask if want
- You may also want to amend s. 767.59 (1f) to provide that if the child support standards are amended and the amendment results in a difference of 20% or more between the existing order and the order that would have resulted under the new child support standards that is an automatic change of circumstances, (in order to get this right to you I did not check what the current language in the bill is. We should verify what the language is, and if there is nothing addressing the issue of this law change being considered an AUTOMATIC CHANGE IN CIRCUMSTANCE, then we need to add this language. Double check though I think the bill currently addresses that and the language may be stronger.)

Overrule the Chen case (2005 AP 55, 280 Wis.2d 344 2005). A shared time payor shall pay child support in accordance with his or her earning capacity whether or not that party has chosen not to work for any reason. (Background explanation: this is a case where Mom and Dad were both doctors making approximately \$250,000.00 per year each, and they had 50/50 placement. Mom decided to quit her job so she could "spend more time with the kids". Shortly after that she hit up Dad for child support. Dad was forced to pay her child support of around \$4,000.00 per month because she was no longer employed.)

Further, the constituent thought it should be stated that if there is an open "change of circumstance" on a case pending in the courts at the time this law passes (either circuit, appeals, or supreme) that this law and all aspects of it are immediately binding and support changes made under this law shall go back to the date the original change in circumstance was filed.

If you could get back to me on this topic, I'd greatly appreciate it. It can't be introduced until January, but we told him we would start the drafting process as soon as we could.

Thanks,

From: Kahler, Pam
Sent: Friday, August 24, 2012 3:31 PM
To: Braun, Rick
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

Rick:

I have a question about the second item. Child support in the bill is based on monthly net income, which is defined in terms of gross income, as that is defined in the Admin. Code. Neither the code nor the bill looks at assets. Is there some problem I'm not aware of?

For the three items that begin with "You may want to," which do you want to do?

Pam

From: Braun, Rick
Sent: Monday, August 20, 2012 10:22 AM
To: Kahler, Pam
Subject: Child support bill from last session ... Rep Kleefisch's office.

Pam:

I replaced Stephanie Kundert in March. We are looking to re-introduce what was numbered LRB 3501 last session regarding child support payment calculations.

The constituent for whom we are working on this has a few more concerns. They are as follows:

Add to s. 767.59 that child support judgments may be revised regardless of whether child support was determined by stipulation, court order or arbitration

Child support shall only be based on net income after income taxes (or imputed income if person is working less than capacity) but not on assets.

You may want to kill off the portion of deviation statute (767.511 (1m)) that allows the Court to order support in excess the percentage standards.

You may want to amend s. 767.59 (1c) to require a court to modify child support upon a showing of a change of circumstances (replacing "may" with "shall" in the last sentence) for child support cases. Perhaps the existing language of 767.59 (1)c should still apply to subsection 2. leaving the may to apply.

You may also want to amend s. 767.59 (1f) to provide that if the child support standards are amended and the amendment results in a difference of 20% or more between the existing order and the order that would have resulted under the new child support standards that is an automatic change of circumstances, (in order to get this right to you I did not check what the current language in the bill is. We should verify what the language is, and if there is nothing addressing the issue of this law change being considered an AUTOMATIC CHANGE IN CIRCUMSTANCE, then we need to add this language. Double check though I think the bill currently addresses that and the language may be stronger.)

Overrule the Chen case (2005 AP 55, 280 Wis.2d 344 2005). A shared time payor shall pay child support in accordance with his or her earning capacity

Kahler, Pam

From: Kahler, Pam
Sent: Friday, August 24, 2012 3:48 PM
To: Braun, Rick
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

I guess I have another question. Under Section 33 (1) of the draft, the changes in the act apply to orders that are granted on or after the effective date, and that includes orders revising other orders. Thus, if a case is pending on the effective date, any orders granted in the case on or after the effective date would have to comply with the new law. Does that not accomplish what is requested in the second to the last item? If not, what exactly is meant? If you mean that any orders already granted in the pending case would have to be immediately revised to comply, I don't see how that is administratively feasible. The courts are not going to be able to review all cases that this might apply to and automatically revise all the orders already granted. It would be more feasible for a party to file a motion for a change in any order already granted based on the new law.

From: Braun, Rick
Sent: Monday, August 20, 2012 10:22 AM
To: Kahler, Pam
Subject: Child support bill from last session ... Rep Kleefisch's office.

Pam:

I replaced Stephanie Kundert in March. We are looking to re-introduce what was numbered LRB 3501 last session regarding child support payment calculations.

The constituent for whom we are working on this has a few more concerns. They are as follows:

- ✓ Add to s. 767.59 that child support judgments may be revised regardless of whether child support was determined by stipulation, court order or arbitration
- ✓ Child support shall only be based on net income after income taxes (or imputed income if person is working less than capacity) but not on assets.
- ✓ You may want to kill off the portion of deviation statute (767.511 (1m) that allows the Court to order support in excess the percentage standards.
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- ✓ You may also want to amend s. 767.59 (1f) to provide that if the child support standards are amended and the amendment results in a difference of 20% or more between the existing order and the order that would have resulted under the new child support standards that is an automatic change of circumstances, (in order to get this right to you I did not check what the current language in the bill is. We should verify what the language is, and if there is nothing addressing the issue of this law change being considered an AUTOMATIC CHANGE IN CIRCUMSTANCE, then we need to add this language. Double check though I think the bill currently addresses that and the language may be stronger.)

Kahler, Pam

From: Kahler, Pam
Sent: Friday, August 24, 2012 4:11 PM
To: Braun, Rick
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

FYI, regarding the fifth item, current law, as well as the draft, provides that it is a rebuttable presumption of a substantial change in circumstances if there is a difference (not even 20%) between the amount of support ordered by a court and the amount that the payer would have been required to pay using the percentage standard (including the new one) and the court did not use the percentage standard (including the new one) and did not provide the information required under the statute that is required to be provided when the percentage standard is not used.

From: Braun, Rick
Sent: Monday, August 20, 2012 10:22 AM
To: Kahler, Pam
Subject: Child support bill from last session ... Rep Kleefisch's office.

Pam:

I replaced Stephanie Kundert in March. We are looking to re-introduce what was numbered LRB 3501 last session regarding child support payment calculations.

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Overrule the Chen case (2005 AP 55, 280 Wis.2d 344 2005). A shared time payor shall pay child support in accordance with his or her earning capacity whether or not that party has chosen not to work for any reason. (Background explanation: this is a case where Mom and Dad were both doctors making approximately \$250,000.00 per year each, and they had 50/50 placement. Mom decided to quit her job so she could "spend more time with the kids". Shortly after that she hit up Dad for child

Kahler, Pam

From: Braun, Rick
Sent: Monday, August 27, 2012 9:21 AM
To: Kahler, Pam
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

Pam,

Hopefully I can take care of the questions with one email. If not, no problem.

First off, we just want to clean up the law. We're dealing with one constituent who had a case where although his gross income is no longer particularly high, he has significant assets and a judge's ruling seems to indicate he doesn't care if the guy has to sell off assets to make what are some very high payments. We want to strengthen the language to make certain this is not possible after passage of this law. Child support should ONLY be based on income, and never what the assets are of either party.

Also just disregard the "you may want to" as we want those all included in the bill.

Regarding the second question you sent, we want to strengthen the language and not make it rebuttable. The case of our constituent involves assets being taken into account. He's paying huge child support payments despite his business taking a big downturn, but the judge made his assets from a pre-nuptial agreement an issue in child support payments.

Let me know if there's anything else.

Rick Braun
Office of Rep. Joel Kleefisch

From: Kahler, Pam
Sent: Friday, August 24, 2012 3:31 PM
To: Braun, Rick
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

Rick:

I have a question about the second item. Child support in the bill is based on monthly net income, which is defined in terms of gross income, as that is defined in the Admin. Code. Neither the code nor the bill looks at assets. Is there some problem I'm not aware of?

For the three items that begin with "You may want to," which do you want to do?

Pam

From: Braun, Rick
Sent: Monday, August 20, 2012 10:22 AM
To: Kahler, Pam
Subject: Child support bill from last session ... Rep Kleefisch's office.

Kahler, Pam

From: Kahler, Pam
Sent: Friday, September 07, 2012 3:07 PM
To: Braun, Rick
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

Rick,

I need some clarification on the last requested change – related to the Chen case. Currently, a parent's earning capacity is something that the court considers to modify the amount of child support from the percentage standard (see s. 767.511 (1m) (hs), although, under this bill a modification can only be a reduction, so considering earning capacity really doesn't make sense any longer for modifications). In this bill, the court is supposed to base child support on net income, which would not include earning capacity, only actual income. So, do you want to have child support based on net income, unless that is less than earning capacity and then child support would be based on earning capacity – so that the court would in every case have to determine earning capacity and compare that to net income? Or do you want the court to determine and use earning capacity only in specific situations, such as if a parent has voluntarily quit working? If you want the latter, you will need to formulate the exact conditions for using earning capacity instead of actual net income.

Thank you!
Pam

From: Braun, Rick
Sent: Monday, August 27, 2012 9:21 AM
To: Kahler, Pam
Subject: RE: Child support bill from last session ... Rep Kleefisch's office.

Pam,

Hopefully I can take care of the questions with one email. If not, no problem.

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Office of Rep. Joel Kleefisch

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: PJK) (Date: 9 / 24 / 12)

Note:

**BOTH DRAFTS SHOULD HAVE THE
SAME "REQUESTOR"**

(exception: companion bills)




☒ Please transfer the drafting file for
2011 ~~2009~~ LRB - 3501 (For: Rep. ~~Sen.~~ Kleefisch)
to the drafting file for

2013 ~~2011~~ LRB - 0016 (For: Rep. ~~Sen.~~ Kleefisch)

-----OR-----

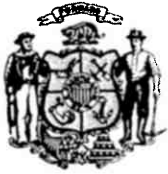
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 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history
("guts") from the original file: _____

Updated: 09/16/2010



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3501/2
PJK:sac&med:rs

0016/P
sac
r m is run
(sorry!)

2011 BILL

(in 9-11)
D-note

PWF

regenerate ✓

1 AN ACT *to renumber and amend* 767.511 (1j), 767.511 (1n) and 767.511 (2); *to*
2 *amend* 767.215 (1) (b), 767.215 (2m) (a) 2., 767.225 (1n) (b) 1., 767.511 (1) (a),
3 767.511 (1j) (title), 767.511 (1m) (intro.), 767.511 (2) (title), 767.513 (2), 767.55
4 (2) (c), 767.553 (1) (a), 767.553 (1) (b), 767.59 (1f) (b) 4., 767.59 (2) (a), 767.80 (7),
5 767.813 (6) and 767.85 (2); and *to create* 767.511 (1j) (a), 767.511 (1j) (b) 1.,
6 767.511 (1j) (b) 2., 767.511 (1j) (b) 2m., 767.511 (1j) (b) 3., 767.511 (1j) (b) 4.,
7 767.511 (1j) (b) 5., 767.511 (1m) (bc), 767.511 (1p), 767.511 (1s), 767.511 (2) (b)
8 and 767.59 (1f) (b) 5. of the statutes; **relating to:** calculating child support and
9 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, in divorces, paternity actions, and other actions affecting the family in which there are minor children the court is required to order either or both parents to pay an amount that is reasonable or necessary to fulfill a duty to support a child. The court must generally determine child support payments by using the percentage standard set out in the Wisconsin Administrative Code (code) and established by the Department of Children and Families (DCF). The percentage standard is a percentage of the child support payer's monthly income available for

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support. The percentage that the child support payer must pay varies with the number of children to be supported. Under the percentage standard, a payer must pay 17 percent of his or her monthly income available for support for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children. Generally, the parent who has physical placement with a child for less time is ordered to pay child support to the other parent on the basis of the percentage standard.

In addition to the percentage standard, the code provides special methods that the court may, but is not required to, use for calculating child support in special situations: serial-family parents; shared-placement payers; split-placement payers; low-income payers; and high-income payers. A serial-family parent is a parent who is already obligated to pay child support and who is later ordered to pay support for another child, from a later marriage or a paternity adjudication, for example. The amount of support that the person must pay under the later order may be calculated by first reducing the payer's monthly income available for support by the amount under the first child support order and then applying the percentage standard to that reduced income amount.

Shared-placement parents are parents who both have physical placement with a child for at least 25 percent of the time or 92 days a year and who are both ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child. For shared-placement parents, child support may be determined by multiplying each parent's income by the percentage standard, multiplying each of those resulting amounts by 150 percent, and then multiplying the resulting amount determined for each parent by the other parent's proportion of physical placement. The parent with the higher resulting amount pays to the other parent the difference between the amounts or the amount that would be determined by applying the percentage standard to his or her income, whichever is lower.

Split-placement parents are parents who have two or more children and each has placement with at least one but not all of the children. Under the code, child support may be determined by multiplying each parent's income by the pro rata percentage standard that applies for the number of children placed with the other parent. (For example, if there are two children and each parent has physical placement with one child, the pro rata percentage standard is 12.5 percent, or one-half of the 25 percent that applies for two children under the percentage standard.) The parent who would be required to pay the higher amount pays the difference to the other parent.

For low-income payers and high-income payers, the court may determine child support by using a schedule of percentages that are different from the percentages in the percentage standard. Currently, a low-income payer is one with annual income available for support of \$16,200 or less. This amount, which is 150 percent of poverty, is adjusted based on federal poverty guidelines. The schedule of percentages is reduced for each income level in gradients of \$25 per monthly income amount. Currently, the percentages, depending on income level, range from 11.11 percent to 17 percent for one child and from 22.22 percent to 34 percent for five or more children. For high-income payers, child support may be determined by

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multiplying annual income available for support that is less than \$84,000 by the usual percentages of the percentage standard, income between \$84,000 and \$150,000 by a different schedule of percentages that are about 80 percent of the usual percentages, and income above \$150,000 by another schedule of percentages that are about 60 percent of the usual percentages. For example, for a payer with annual income available for support above \$150,000, child support for one child may be determined by multiplying the payer's monthly income under \$7,000 by 17 percent, multiplying the additional monthly income between \$7,000 and \$12,500 by 14 percent, multiplying the additional monthly income over \$12,500 by 10 percent, and adding together the amounts obtained.

The code provides that the court must determine a parent's monthly income that is available for child support by dividing by 12 the sum of the parent's gross annual income, or gross annual income modified for business expenses, the parent's annual imputed income based on earning capacity, and the parent's annual income imputed from assets. Under the code, the court may impute income to a payer if the court determines that the payer's income is less than his or her earning capacity or if the payer has unproductive assets or has diverted income into assets to avoid paying child support. For imputing income based on earning capacity, the court assesses the parent's education, training, previous work experience and income level, and the availability of work in or near the parent's community. Income imputation for unproductive assets involves multiplying the net value of the parent's assets by the current six-month treasury bill rate or another reasonable rate.

Under the statutes, a court is authorized, upon a party's request, to modify the amount of child support that would be ordered by using the percentage standard if the court finds that use of the percentage standard is unfair to the child or either of the parties. In making this finding, the court must consider a number of factors, such as the earning capacity of each parent, the desirability that the custodian remain in the home as a full-time parent, and extraordinary travel expenses incurred in exercising physical placement rights.

This bill sets out a child support percentage standard in the statutes for actions affecting the family and specifies how a court must determine child support, including for revisions of existing child support orders. Under the bill, the court must determine the support obligation of each parent who has physical placement with a child for less than 75 percent of the time and order one or both parents to pay an amount for the support of the child. To calculate a parent's child support obligation, the parent's net monthly income is multiplied by a specified percentage. Under the bill, net monthly income is a parent's gross monthly income, determined in the manner provided in the code, less federal and state income tax that would be withheld, or that would be paid by a self-employed individual, based on the actual number of dependents that the individual or self-employed individual is legally entitled to claim on his or her income tax return. If a parent's net monthly income is \$7,000 or less (which equals \$84,000 or less of net annual income), his or her total net monthly income is multiplied by the same percentages as the percentage standard under the code: 17 percent for one child, 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for more than

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four children. However, if a parent's net monthly income exceeds \$7,000, his or her total net monthly income is multiplied by 14 percent for one child, 20 percent for two children, 23 percent for three children, 25 percent for four children, and 27 percent for more than four children, except that the court may not calculate a parent's child support obligation on any of the parent's net income that exceeds \$150,000 per year, annually adjusted in accordance with the consumer price index.

Under current law, in addition to ordering child support for a child, the court is required to assign responsibility for payment of the child's health care expenses and may require a parent to initiate or continue health insurance coverage for the child. Under the bill, after determining a parent's monthly child support obligation, the court must deduct from that amount any amount the parent currently pays, or is ordered to pay, for the child's health care coverage, health care expenses not covered by insurance, and child care expenses. Then, if both parents have physical placement with a child for more than 25 percent of the time, each parent's child support obligation, thus determined, is multiplied by the percentage of time that the other parent has physical placement with the child to determine each parent's comparative child support obligation. Whichever parent has the larger comparative child support obligation pays the difference between the two to the other parent as child support.

Under the bill, a court is still authorized, upon a party's request, to modify the amount of child support that would be ordered by using the new percentage standard if the court finds that its use is unfair to the child or either of the parties after considering the factors under current law. However, if the court does modify the amount of child support that would be ordered by using the new percentage standard, the court is still prohibited from calculating any child support on a parent's net income over \$150,000 per year, unless the parties agree in writing or in open court that the court is not prohibited from doing so. In addition, the bill adds, as another factor for the court to consider, the amount of income actually available to a parent for the payment of child support. The bill directs DCF to promulgate rules on how to compute the amount of income actually available to a parent, and provides that, if a parent is self-employed, a cash flow statement from a certified public accountant on behalf of the parent establishes the parent's income that is actually available for support.

Current law provides that the court may require a portion of the amount that either party must pay in child support to be set aside in a separate fund or trust for the support, education, and welfare of the child. The bill does not change the ability of the court to set funds aside for the child. The bill adds, however, that if the court determines that the amount of child support calculated in the new manner exceeds the amount reasonably necessary to support the child's current needs, the court must order the excess to be deposited in an account that requires the signatures of both parents for withdrawal, to be used for any extraordinary needs of the child. When the child support obligation ends, any funds remaining must be used for postsecondary education expenses of the child. Any funds remaining after ten years after the child support obligation ends must be returned to the parent or parents in

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proportion to their comparative child support obligations or distributed in another manner specified by the court.

Under current law, the court may revise the amount of child support under an existing order only if the court finds that there has been a substantial change in circumstances. The bill provides that the creation of the new percentage standard in the statutes and the other new requirements related to determining child support constitute a substantial change in circumstances on which a revision may be based. The bill also provides that any agreement related to child support that was entered into before the effective date of the bill that has not yet been approved by a court is void unless the parties reaffirm the agreement in writing or in open court on or after the effective date of the bill. Finally, the bill provides that the court may determine a parent's child support obligation in conformity with any provisions of the code that are not in conflict with the new percentage standard or other new requirements in the statutes.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 767.215 (1) (b) of the statutes is amended to read:

2 767.215 (1) (b) The clerk of court shall provide without charge, to each person
3 filing a petition requesting child support, a document setting forth the percentage
4 standard ~~established by the department under s. 49.22 (9)~~ 767.511 (1j) (b) and listing
5 the factors that a court may consider under s. 767.511 (1m).

6 SECTION 2. 767.215 (2m) (a) 2. of the statutes is amended to read:

7 767.215 (2m) (a) 2. Shall be accompanied by a document, provided without
8 charge by the clerk of court, setting forth the percentage standard under s. 767.511
9 (1j) (b) or, if the action affecting the family is one under s. 767.001 (1) (m), the
10 percentage standard established by the department under s. 49.22 (9) and listing the
11 factors that a court may consider under s. 767.511 (1m).

12 SECTION 3. 767.225 (1n) (b) 1. of the statutes is amended to read:

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1 767.225 (1n) (b) 1. If the court makes a temporary child support order that
2 deviates from the amount of support that would be required by using the percentage
3 standard under s. 767.511 (1j) (b) or, if the action affecting the family is one under
4 s. 767.001 (1) (m), the percentage standard established by the department under s.
5 49.22 (9), the court shall comply with the requirements of relating to the court's
6 statements in writing or on the record described under s. 767.511 (1n) (1r).

7 SECTION 4. 767.511 (1) (a) of the statutes is amended to read:

8 767.511 (1) (a) Order Determine the support obligation of each parent who has
9 physical placement with his or her child for less than 75 percent of the time and order
10 either or both parents to pay an amount reasonable or necessary to fulfill a duty to
11 support ~~a~~ the child. The support amount must be expressed as a fixed sum unless
12 the parties have stipulated to expressing the amount as a percentage of the payer's
13 income and the requirements under s. 767.34 (2) (am) 1. to 3. are satisfied.

14 SECTION 5. 767.511 (1j) (title) of the statutes is amended to read:

15 767.511 (1j) (title) PERCENTAGE CALCULATION; PERCENTAGE STANDARD GENERALLY
16 REQUIRED.

17 SECTION 6. 767.511 (1j) of the statutes is renumbered 767.511 (1j) (b) (intro.)
18 and amended to read:

19 767.511 (1j) (b) (intro.) Except as provided in sub. (1m), the court shall
20 determine the child support payments by using the percentage standard established
21 by the department under s. 49.22 (9). obligation of a parent in the following manner:

22 SECTION 7. 767.511 (1j) (a) of the statutes is created to read:

23 767.511 (1j) (a) In this subsection:

24 1. "Gross income" has the meaning given in s. DCF 150.02 (13) (a), Wis. Adm.
25 Code.

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2. "Net income" means gross income less federal and state income tax that would be withheld based on the actual number of dependents that the individual is legally entitled to claim on his or her income tax return or that would be paid by a self-employed individual based on the actual number of dependents that the self-employed individual is legally entitled to claim on his or her income tax return.

Insert 7-5

SECTION 8. 767.511 (1j) (b) 1. of the statutes is created to read:

767.511 (1j) (b) 1. Subject to subd. 3., if the parent's total monthly net income is \$7,000 or less, his or her monthly child support obligation equals the amount that is the following percentage of his or her total monthly net income:

- a. For one child, 17 percent.
- b. For 2 children, 25 percent.
- c. For 3 children, 29 percent.
- d. For 4 children, 31 percent.
- e. For more than 4 children, 34 percent.

SECTION 9. 767.511 (1j) (b) 2. of the statutes is created to read:

767.511 (1j) (b) 2. Subject to subds. 2m. and 3., if the parent's total monthly net income exceeds \$7,000, his or her monthly child support obligation equals the amount that is the following percentage of his or her total monthly net income:

- a. For one child, 14 percent.
- b. For 2 children, 20 percent.
- c. For 3 children, 23 percent.
- d. For 4 children, 25 percent.
- e. For more than 4 children, 27 percent.

SECTION 10. 767.511 (1j) (b) 2m. of the statutes is created to read:

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1 767.511 (1j) (b) 2m. The court may not calculate the amount of child support
2 that a parent is obligated to pay on any of the parent's net income that exceeds
3 \$150,000 per year. This ^{income} amount shall be adjusted annually, beginning in ~~2013~~ ²⁰¹⁵ to
4 reflect changes in the consumer price index for all urban consumers, U.S. city
5 average, as determined by the U.S. department of labor.

6 **SECTION 11.** 767.511 (1j) (b) 3. of the statutes is created to read:

7 767.511 (1j) (b) 3. When the court calculates a parent's child support obligation,
8 unless the parties agree otherwise in writing or orally in open court, the court shall
9 reduce the amount determined under subd. 1. or 2. for the parent by the amount per
10 month that the parent currently pays or is ordered to pay for any of the following
11 costs:

12 a. Health care coverage for the child.

13 b. The child's health care expenses that are not covered by insurance.

14 c. Child care expenses.

15 **SECTION 12.** 767.511 (1j) (b) 4. of the statutes is created to read:

16 767.511 (1j) (b) 4. If each parent has physical placement with a child for more
17 than 25 percent of the time, the child support obligation of each parent shall be
18 calculated as provided in subds. 1. to 3. and multiplied by the percentage of time that
19 the other parent has physical placement with the child. The product of a parent's
20 child support obligation multiplied by the percentage of time that the other parent
21 has physical placement with the child is that parent's comparative child support
22 obligation amount. Subject to sub. (2) (b), the parent with the larger comparative
23 child support obligation amount shall pay to the other parent that amount reduced
24 by the payee parent's comparative child support obligation amount.

25 **SECTION 13.** 767.511 (1j) (b) 5. of the statutes is created to read:

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1 767.511 (1j) (b) 5. In addition to the calculations under subds. 1. to 4., the court
2 may determine a parent's child support obligation under this section in conformity
3 with any provisions of ch. DCF 150, Wis. Adm. Code, that are not in conflict with
4 subds. 1. to 4. *Insert 9-4* *Insert 9-3* *reduce*

5 **SECTION 14.** 767.511 (1m) (intro.) of the statutes is amended to read:

6 767.511 (1m) DEVIATION FROM STANDARD; FACTORS. (intro.) Upon request by a
7 party, the court may ~~modify~~ the amount of child support payments determined under
8 sub. (1j), subject to sub. (1p), if, after considering the following factors, the court finds
9 by the greater weight of the credible evidence that use of ~~the~~ that percentage
10 standard is unfair to the child or to any of the parties:

11 **SECTION 15.** 767.511 (1m) (bc) of the statutes is created to read:

12 767.511 (1m) (bc) The amount of income actually available to a parent for the
13 payment of child support.

14 **SECTION 16.** 767.511 (1n) of the statutes is renumbered 767.511 (1r) and
15 amended to read:

16 767.511 (1r) DEVIATION FROM STANDARD; RECORD. If the court finds under sub.
17 (1m) that use of the percentage standard under sub. (1j) (b) is unfair to the child or
18 the requesting party, the court shall state in writing or on the record the amount of
19 support that would be required by using the percentage standard, the amount by
20 which the court's order deviates from that amount, its reasons for finding that use
21 of the percentage standard is unfair to the child or the party, its reasons for the
22 amount of the ~~modification~~ *reduction* and the basis for the ~~modification~~ *reduction*

23 **SECTION 17.** 767.511 (1p) of the statutes is created to read:

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reduction

1 767.511 (1p) LIMIT ON DEVIATION FROM STANDARD. Unless the parties agree
2 otherwise in writing or in open court, the court shall comply with sub. (1j) (b) 2m. in
3 any modification of child support payments under sub. (1m).

4 SECTION 18. 767.511 (1s) of the statutes is created to read:

5 767.511 (1s) RULES FOR INCOME AVAILABLE FOR SUPPORT. The department shall
6 promulgate rules related to how the amount of income actually available to a parent
7 for the payment of child support shall be computed for purposes of sub. (1m) (bc). If
8 a parent is self-employed, a cash flow statement prepared by a certified public
9 accountant on behalf of the parent shall establish the parent's income actually
10 available for the payment of child support for purposes of sub. (1m) (bc).

11 SECTION 19. 767.511 (2) ^x(title) of the statutes is amended to read:

12 767.511 (2) (title) SEPARATE ACCOUNT, FUND, OR TRUST.

13 SECTION 20. 767.511 (2) ^xof the statutes is renumbered 767.511 (2) (a) and
14 amended to read:

15 767.511 (2) (a) The Except as provided in par. (b), the court may protect and
16 promote the best interests of the minor children by setting aside a portion of the child
17 support ~~which~~ that either party is ordered to pay in a separate fund or trust for the
18 support, education, and welfare of such children.

19 SECTION 21. 767.511 (2) (b) of the statutes is created to read:

20 767.511 (2) (b) If the court determines that the amount of child support
21 calculated in the manner provided in this section exceeds the amount reasonably
22 necessary to support the child's current needs, the court shall order that the excess
23 amount be deposited in an account requiring the signatures of both parents for
24 withdrawal, to be used for any extraordinary needs of the child on which the parents
25 agree. Any funds remaining in the account when the child support obligation ends

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1 shall be used for postsecondary education expenses for the child. Any funds
2 remaining in the account after 10 years from the date on which the child support
3 obligation ends shall be returned to the parents in proportion to the comparative
4 child support obligation of each under sub. (1j) (b) 4. or, if only one parent had a child
5 support obligation, to that parent, or shall be distributed in another manner
6 specified by the court.

7 **SECTION 22.** 767.513 (2) of the statutes is amended to read:

8 767.513 (2) RESPONSIBILITY AND PAYMENT. In addition to ordering child support
9 for a child under s. 767.511 (1), and subject to s. 767.511 (1j) (b) 3., the court shall
10 specifically assign responsibility for and direct the manner of payment of the child's
11 health care expenses. In assigning responsibility for a child's health care expenses,
12 the court shall consider whether a child is covered under a parent's health insurance
13 policy or plan at the time the court approves a stipulation for child support under s.
14 767.34, enters a judgment of annulment, divorce, or legal separation, or enters an
15 order or a judgment in a paternity action or in an action under s. 767.001 (1) (f) or
16 (j), 767.501, or 767.805 (3), the availability of health insurance to each parent
17 through an employer or other organization, the extent of coverage available to a
18 child, and the costs to the parent for the coverage of the child. A parent may be
19 required to initiate or continue health care insurance coverage for a child under this
20 section. If a parent is required to do so, he or she shall provide copies of necessary
21 program or policy identification to the custodial parent and is liable for any health
22 care costs for which he or she receives direct payment from an insurer. This section
23 shall not be construed to limit the authority of the court to enter or modify support
24 orders containing provisions for payment of medical expenses, medical costs, or
25 insurance premiums that are in addition to and not inconsistent with this section.

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x

1 **SECTION 23.** 767.55 (2) (c) of the statutes is amended to read:

2 767.55 (2) (c) If the court enters an order under par. (am), it shall order the
3 parent to pay child support equal to the amount determined by applying the
4 percentage standard established under s. ~~49.22 (9)~~ 767.511 (1j) (b) or equal to the
5 amount of child support that the parent was ordered to pay in the most recent
6 determination of support under this chapter. The child support obligation ordered
7 under this paragraph continues until the parent makes timely payment in full for
8 3 consecutive months or until the person participates in the program under s. 49.36
9 for 16 weeks, whichever occurs first. The court shall provide in its order that the
10 parent shall make child support payments calculated under s. 767.511 (1j) or (1m)
11 after the obligation to make payments ordered under this paragraph ceases.

12 **SECTION 24.** 767.553^x (1) (a) of the statutes is amended to read:

13 767.553 (1) (a) An order for child or family support under this chapter may
14 provide for an annual adjustment in the amount to be paid based on a change in the
15 payer's income if the amount of child or family support is expressed in the order as
16 a fixed sum and based on the percentage standard ~~established by the department~~
17 under s. ~~49.22 (9)~~ 767.511 (1j) (b). No adjustment may be made under this section
18 unless the order provides for the adjustment.

19 **SECTION 25.** 767.553^x (1) (b) of the statutes is amended to read:

20 767.553 (1) (b) An adjustment under this section may not be made more than
21 once in a year and shall be determined on the basis of the percentage standard
22 ~~established by the department~~ under s. ~~49.22 (9)~~ 767.511 (1j) (b).

23 **SECTION 26.** 767.59 (1f) (b) 4. of the statutes is amended to read:

24 767.59 (1f) (b) 4. A. If the action is one to revise a judgment or order with respect
25 to child support ordered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183

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1 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), or 938.363 (2), a difference between the
2 amount of child support ordered by the court to be paid by the payer and the amount
3 that the payer would have been required to pay based on the percentage standard
4 established by the department under s. 49.22 (9) if the court did not use ~~the~~ that
5 percentage standard in determining the child support payments and did not provide
6 the information required under s. 46.10 (14) (d), 49.345 (14) (d), 301.12 (14) (d), or
7 767.511 ~~(1n)~~ (1r), whichever is appropriate.

8 **SECTION 27.** 767.59 (1f) (b) 5. of the statutes is created to read:

9 767.59 (1f) (b) 5. If the action is one to revise a judgment or order with respect
10 to child support or family support ordered under this chapter or s. 948.22 (7), a
11 difference between the amount of child support ordered by the court to be paid by the
12 payer and the amount that the payer would have been required to pay based on the
13 percentage standard under s. 767.511 (1j) (b) if the court did not use that percentage
14 standard in determining the child support payments and did not provide the
15 information required under s. 767.511 (1r).

16 **SECTION 28.** 767.59 (2) (a) of the statutes is amended to read:

17 767.59 (2) (a) Except as provided in par. (b) or (c), if the court revises a judgment
18 or order with respect to child support payments, it shall do so by using the percentage
19 standard established by the department under s. 49.22 (9) 767.511 (1j) (b).

20 **SECTION 29.** 767.80 (7) of the statutes is amended to read:

21 767.80 (7) CLERK TO PROVIDE DOCUMENT. The clerk of court shall provide without
22 charge to each person bringing an action under this section, except to the state under
23 sub. (1) (g) or (6m), a document setting forth the percentage standard established by
24 the department under s. 49.22 (9) 767.511 (1j) (b) and listing the factors that a court
25 may consider under s. 767.511 (1m).

Insert 13-19

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1 **SECTION 30.** 767.813 (6) of the statutes is amended to read:

2 767.813 (6) DOCUMENT. The summons served on the respondent shall be
3 accompanied by a document, provided without charge by the clerk of court, setting
4 forth the percentage standard ~~established by the department~~ under s. ~~49.22 (9)~~
5 767.511 (1j) (b) and listing the factors that a court may consider under s. 767.511
6 (1m).

7 **SECTION 31.** 767.85 (2) of the statutes is amended to read:

8 767.85 (2) CONSIDERATIONS. Before making any temporary order under sub. (1),
9 the court shall consider those factors that the court is required to consider when
10 granting a final judgment on the same subject matter. If the court makes a
11 temporary child support order that deviates from the amount of support that would
12 be required by using the percentage standard ~~established by the department~~ under
13 s. ~~49.22 (9)~~ 767.511 (1j) (b), the court shall comply with the requirements of s. 767.511
14 ~~(1n)~~ (1r).

15 **SECTION 32. Nonstatutory provisions.**

16 (1) SUBSTANTIAL CHANGE IN CIRCUMSTANCES. Notwithstanding section 767.59 (1f)
17 (b) 5. of the statutes, as created by this act, the renumbering and amendment of
18 section 767.511 (1j) of the statutes by this act and the creation of section 767.511 (1j)
19 (b) 1. to 4. and (1m) (bc) of the statutes by this act constitute a substantial change
20 in circumstances on which may be based a revision under section 767.59 of the
21 statutes of a judgment or order with respect to child or family support.

22 (2) AGREEMENTS VOID. Any agreement entered into before the effective date of
23 this subsection by parties to an action affecting the family, as defined in section
24 767.001 (1) of the statutes, that relates to child support and that has not been
25 approved by a court before the effective date of this subsection is void unless the

BILL

1 parties reaffirm the agreement in writing or in open court on or after the effective
2 date of this subsection.

3 (3) DOCUMENT PROVIDED BY CLERK SETTING FORTH PERCENTAGE STANDARD.

4 (a) Notwithstanding sections 767.215 (1) (b) and (2m) (a) 2., 767.511 (1m) (bc),
5 767.80 (7), and 767.813 (6) of the statutes, as affected by this act, and SECTION 33 (2)
6 (a) of this act, a clerk of court is not required to provide a document under section
7 767.215 (1) (b) or (2m) (a) 2., 767.80 (7), or 767.813 (6) of the statutes, as affected by
8 this act, that sets forth the percentage standard under section 767.511 (1j) (b) of the
9 statutes, as affected by this act, and lists the factors that a court may consider under
10 section 767.511 (1m) of the statutes, including section 767.511 (1m) (bc) of the
11 statutes, as created by this act, before the first day of the 3rd month beginning after
12 the effective date of this paragraph.

13 (b) Before the date specified in paragraph (a), a clerk of court may, in all actions
14 affecting the family, provide a document under section 767.215 (1) (b) or (2m) (a) 2.,
15 767.80 (7), or 767.813 (6) of the statutes, as affected by this act, that sets forth the
16 percentage standard established by the department of children and families under
17 section 49.22 (9) of the statutes and lists the factors that a court may consider under
18 section 767.511 (1m) (a), (b), and (bj) to (i) of the statutes.

19 (c) As soon as practicable after the date specified in paragraph (a), a clerk of
20 court shall provide a document that sets forth the percentage standard under section
21 767.511 (1j) (b) of the statutes, as affected by this act, and lists the factors that a court
22 may consider under section 767.511 (1m) of the statutes, including section 767.511
23 (1m) (bc) of the statutes, as created by this act, to each person to whom the clerk
24 provided, after the effective date of this paragraph, a document described in

BILL

1 paragraph (b), except for a person who is a party in an action affecting the family, as
2 defined in section 767.001 (1) (m) of the statutes.

3 (d) Each person who receives a document under paragraph (c) from a clerk of
4 court and who served a summons under section 767.215 (2m) of the statutes, as
5 affected by this act, or under section 767.813 (6) of the statutes, as affected by this
6 act, after the effective date of this paragraph accompanied by a document described
7 in paragraph (b) shall ^{as soon as practicable} provide the document received from the clerk under paragraph
8 (c) to the party on whom the summons accompanied by the document described in
9 paragraph (b) was served.

10 **SECTION 33. Initial applicability.**

11 (1) GENERAL. Except as provided in subsection (2), this act first applies to child
12 or family support orders, including temporary orders and orders revising judgments
13 or orders previously granted, that are granted on the effective date of this subsection.

14 (2) DOCUMENTS PROVIDED BY CLERK.

15 (a) The treatment of sections 767.215 (1) (b) and (2m) (a) 2., 767.80 (7), and
16 767.813 (6) of the statutes first applies to actions or proceedings, including actions
17 or proceedings to modify a judgment or order previously granted, that are
18 commenced on the effective date of this paragraph.

19 (b) SECTION 32 (3) of this act first applies to actions or proceedings, including
20 actions or proceedings to modify a judgment or order previously granted, that are
21 commenced on the effective date of this paragraph.

22 (END)

D. note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P1ins
PJK:.....

INSERT A

X (Note: This analysis has not been updated for the changes made to 2011 LRB-3501/2. An updated version will be included after all changes are finalized and approved.)

(END OF INSERT A)

INSERT 7-5

1 2. a. Except as provided in subd. 2. b., "net income" means gross income less
2 federal and state income tax that would be withheld based on the actual number of
3 dependents that the individual is legally entitled to claim on his or her income tax
4 return or that would be paid by a self-employed individual based on the actual
5 number of dependents that the self-employed individual is legally entitled to claim
6 on his or her income tax return.

7 b. For a parent who voluntarily terminates or reduces his or her income for any
8 reason, "net income" means that parent's earning capacity, as determined by the
9 court.

****NOTE: Do you want to impose any time limits on when the voluntary termination or reduction of income occurred, such as after the divorce was commenced or granted or within a certain amount of time before the divorce was commenced? What if early in the marriage the parties together agree that one of them will stop working and be a stay-at-home child care provider? Should the court use earning capacity for that parent, too?

(END OF INSERT 7-5)

INSERT 8-5

10 **SECTION 1.** 767.511 (1j) (b) 2r. of the statutes is created to read:
11 767.511 (1j) (b) 2r. The court may not base any amount of child support that
12 a parent is obligated to pay on the value of any or all of the parent's assets.

(END OF INSERT 8-5)

INSERT 9-3



1 ^{was 4} ^{ins. 9-3} state administrative rules relating to child support

(END OF INSERT 9-3)

INSERT 9-4

****NOTE: I have removed the citation to the administrative rules and substituted a description, instead. This is the preferred method, in case the rules are renumbered or repealed in the future.

(END OF INSERT 9-4)

INSERT 10-3

****NOTE: Is this provision still necessary? Since under the bill the court may only reduce the amount that would be obtained by using the percentage standard, and since when using the percentage standard the court may not calculate support on any net income that exceeds \$150,000 per year, it does not seem necessary to say that when reducing the child support amount, the court may not calculate support on any net income that exceeds \$150,000 per year.

(END OF INSERT 10-3)

INSERT 12-22 1072

2 ^x **SECTION 2.** 767.59 (1c) (a) (intro.) of the statutes is amended to read:

3 767.59 (1c) (a) (intro.) On the petition, motion, or order to show cause of either
4 of the parties, the department, a county department under s. 46.215, 46.22, or 46.23,
5 or a county child support agency under s. 59.53 (5) if an assignment has been made
6 under s. 48.57 (3m) (b) 2. or (3n) (b) 2., 48.645 (3), 49.19 (4) (h), or 49.45 (19) or if either
7 party or their minor children receive aid under s. 48.57 (3m) or (3n) or 48.645 or ch.
8 49, a court may, except as provided in par. (b) and subject to sub. (1f) (a), do any of
9 the following:

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1992 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

10 **SECTION 3.** 767.59 (1c) (a) 1. of the statutes is amended to read:

11 767.59 (1c) (a) 1. Revise and alter a support or maintenance order as to the
12 amount and payment of maintenance or child support and the appropriation and



Ins 12-22 cont'd 2872

1 payment of the principal and income of property held in trust. The court may revise
2 and alter a child support order regardless of whether the amount of support was
3 determined by the court, by court approval of a stipulation of the parties, or through
4 arbitration.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

5 **SECTION 4. 767.59 (1f) (a) of the statutes is repealed and recreated to read:**

6 767.59 (1f) (a) Except as provided in par. (d), in an action under this section to
7 revise a judgment or order as to the amount of child or family support, both of the
8 following apply:

9 1. The court may not revise the judgment or order as to the amount of child or
10 family support unless the court finds a substantial change in circumstances.

11 2. The court must revise the judgment or order as to the amount of child or
12 family support if the court finds a substantial change in circumstances.

13 **SECTION 5. 767.59 (1f) (b) (intro.) of the statutes is amended to read:**

14 767.59 (1f) (b) (intro.) In Except as provided in par. (bm), in an action under
15 this section to revise a judgment or order with respect to the amount of child support,
16 any of the following constitutes a rebuttable presumption of a substantial change in
17 circumstances sufficient to ~~justify~~ require a revision of the judgment or order:

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

(END OF INSERT 12-22)

INSERT 13-19

103

18 **SECTION 6. 767.59 (1f) (bm) of the statutes is created to read:**

19 767.59 (1f) (bm) In an action under this section to revise a judgment or order
20 with respect to child support or family support ordered under this chapter or s.



Eno 13-19 contd 2003

1 948.22 (7), the court shall find a substantial change of circumstances sufficient to
2 require revision of the judgment or order if all of the following apply:

3 1. The amount of child support ordered by the court to be paid by the payer
4 exceeds the amount that the payer would have been required to pay based on the
5 percentage standard under s. 767.511 (1j) (b) by 20 percent or more of the amount
6 that the payer would have been required to pay based on that percentage standard.

7 2. The court did not use the percentage standard under s. 767.511 (1j) (b) in
8 determining the child support payments and did not provide the information
9 required under s. 767.511 (1r).

****NOTE: If the bill passes, this provision will have very limited application
because, under the bill, the court may no longer modify the child support amount from
the percentage standard except to reduce it, so a modified amount should never exceed
the percentage standard.

10 **SECTION 7.** 767.59 (1f) (c) (intro.) of the statutes is amended to read:

11 767.59 (1f) (c) (intro.) In an action under this section to revise a judgment or
12 order with respect to an amount of child support, any of the following may constitute
13 a substantial change of circumstances sufficient to ~~justify~~ require revision of the
14 judgment or order:

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27;
1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191,
237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

15 **SECTION 8.** 767.59 (1f) (d) of the statutes is amended to read:

16 767.59 (1f) (d) In Paragraph (a) does not apply to an action under this section
17 to revise a judgment or order with respect to child or family support, ~~the court is not~~
18 ~~required to make a finding of a substantial change in circumstances~~ to change to a
19 fixed sum the manner in which the amount of child or family support is expressed
20 in the judgment or order.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27;
1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191,
237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

21 **SECTION 9.** 767.59 (2) (a) of the statutes is amended to read:

↓

Ins 13-19 contd 303

1 767.59 (2) (a) Except as provided in par. (b) ~~or (c)~~, if the court revises a judgment
2 or order with respect to child support payments ordered under this chapter or s.
3 948.22 (7), it shall do so by using the percentage standard ~~established by the~~
4 department under s. ~~49.22 (9)~~ 767.511 (1j) (b).

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

5 **SECTION 10. 767.59 (2) (b) of the statutes is amended to read:**

6 767.59 (2) (b) Upon request by a party, the court may ~~modify~~ reduce the amount
7 of revised child support payments determined under par. (a) if, after considering the
8 factors listed in s. 767.511 (1m), the court finds, by the greater weight of the credible
9 evidence, that the use of the percentage standard under s. 767.511 (1j) (b) is unfair
10 to the child or to any of the parties.

History: 1971 c. 220; 1977 c. 105 ss. 38, 48, 49; 1977 c. 418; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.32; 1981 c. 20 s. 2202 (20) (m); 1981 c. 314 s. 146; 1983 a. 27; 1985 a. 176; 1987 a. 27, 355, 413; 1989 a. 212; 1991 a. 39; 1993 a. 16, 481, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 201, 225, 279, 289, 404, 417; 1997 a. 27, 35, 105, 191, 237, 273; 1999 a. 9, 103; 2001 a. 16, 61, 105; 2005 a. 443 ss. 147 to 159, 227, 228; Stats. 2005 s. 767.59; 2007 a. 20.

(END OF INSERT 13-19)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P1dn

PJK:f:...

Sac

- date -

As requested, I amended s. 767.511 (1m), as well as s. 767.59 (2) (b), to allow only a reduction if child support is modified from the percentage standard (a court may not set an amount that is higher than the amount obtained from using the percentage standard). Do you want to modify the remainder of s. 767.511 (1m) (intro.) so that the court may modify (reduce) child support only if the court finds that use of the percentage standard is unfair to *either of the parties*? It does not seem to make sense to say that the court may reduce child support if use of the percentage standard (a higher amount) is unfair to the child; one would assume that the court would *increase* the amount of child support if using the percentage standard is unfair to the child.

Similarly, if the court may modify support only by reducing it, some of the factors for the court to consider for modification (s. 767.511 (1m) (a) to (hs)) may not make sense, for example: (c), (f), (g), (hm), and (hs). Do you want to remove or change any of those factors?

Do you want to allow only reductions from the percentage standard in the case of temporary orders, too? (See ss. 767.225 (1n) (b) 1. and 767.85 (2).)

X I made a preliminary attempt at drafting a provision to overrule *In re Marriage of Chen v. Warner*. You may want something much broader or narrower in scope.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

by adding a second meaning for "net income"

not (I)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0016/P1dn
PJK:sac:jf

September 14, 2012

As requested, I amended s. 767.511 (1m), as well as s. 767.59 (2) (b), to allow only a reduction if child support is modified from the percentage standard (a court may not set an amount that is higher than the amount obtained from using the percentage standard). Do you want to modify the remainder of s. 767.511 (1m) (intro.) so that the court may modify (reduce) child support only if the court finds that use of the percentage standard is unfair to *either of the parties*? It does not seem to make sense to say that the court may reduce child support if use of the percentage standard (a higher amount) is unfair to the child; one would assume that the court would *increase* the amount of child support if using the percentage standard is unfair to the child.

Similarly, if the court may modify support only by reducing it, some of the factors for the court to consider for modification (s. 767.511 (1m) (a) to (hs)) may not make sense, for example: (c), (f), (g), (hm), and (hs). Do you want to remove or change any of those factors?

Do you want to allow only reductions from the percentage standard in the case of temporary orders, too? (See ss. 767.225 (1n) (b) 1. and 767.85 (2).)

I made a preliminary attempt at drafting a provision to overrule *In re Marriage of Chen v. Warner* by adding a second meaning for "net income." You may want something much broader or narrower in scope.

Pamela J. Kahler
Senior Legislative Attorney
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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Rick Braun
Mike Eisenga

Rep Kleefisch Office
Oct 16, 2:30 p.m.

family

floor & ceiling \rightarrow only by stipulation

✓ ~~*~~ ct cannot ^{order} floor or ceiling unless based on stipulation

re. revision
a floor or ceiling

✓ ~~*~~ change in income \rightarrow automatic change
of circumstances

✓ ~~*~~ change in payer income \rightarrow any floor or ceiling
is invalid

✓ ~~*~~ family support addition (not > child support)

(change all way out to prohibited - new stuff)

✓ ~~*~~ add may not \uparrow from % standard
temporary

✓ ~~*~~ reduce temp order, too

~~*~~ D-rule re. "court is prohibited"

plans - stats

"may not" "shall not"

Definitions of Gross Income and Gross Business Income.

(13) "Gross income."

(a) "Gross income" means all of the following:

1. Salary and wages.
2. Interest and investment income.
3. Social Security disability and old-age insurance benefits under 42 USC 401 to 433.
4. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.
5. Unemployment insurance.
6. Income continuation benefits.
7. Voluntary deferred compensation, employee contributions to any employee benefit plan or profit-sharing, and voluntary employee contributions to any pension or retirement account whether or not the account provides for tax deferral or avoidance.
8. Military allowances and veterans benefits.

9. The amount of income after adding wages paid to dependent household members, adding undistributed income that the court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

10. Undistributed income of a corporation, including a closely-held corporation, or any partnership, including a limited or limited liability partnership, in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset under s. DCF 150.03 (4). In this paragraph:

a. "Undistributed income" means federal taxable income of the closely held corporation, partnership, or other entity plus depreciation claimed on the entity's federal income tax return less a reasonable allowance for economic depreciation.

b. A "reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight line method and useful lives as determined under federal income tax laws and regulations.

Note: Income considered under this subsection is subject to the adjustments under s. DCF 150.03 (2).

11. All other income, whether taxable or not, except that gross income does not include any of the following:

- a. Child support.
- b. Foster care payments under s. 48.62, Stats.
- c. Kinship care payments under s. 48.57 (3m) or (3n), Stats.
- d. Public assistance benefits under ch. 49, Stats., except that child care subsidy payments under s. 49.155, Stats., shall be considered income to a child care provider.
- e. Food stamps under 7 USC 2011 to 2036.
- f. Cash benefits paid by counties under s. 59.53 (21), Stats.

g. Supplemental Security Income under 42 USC 1381 to 1383f and state supplemental payments under s. 49.77, Stats.

h. Payments made for social services or any other public assistance benefits.

(b) This subsection defines gross income used in establishing a child support order under this chapter and may not be used to limit income withholding under s. 767.75, Stats., or the assignment of worker's compensation benefits for child support under s. 102.27 (2), Stats. Note: This paragraph clarifies that although the portion of worker's compensation awards not intended to replace income is excluded from gross income in establishing a child support order, the full worker's compensation benefit is assignable for the collection of child support.

Language regarding floors and ceilings

No court shall enter any child support order that contains purports to establish a minimum or maximum child support order (such as a "floor" or "Ceiling") that may be entered upon revision.

add to 767.59 (1f) (b) 5.any order purporting to establish a floor or a ceiling for child support.

Language regarding family support not to exceed child support standards.

X

767.531 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under § 767.511 and maintenance payment orders under § 767.56. No such order may be entered that exceeds the child support percentage standards of 767.511. A party ordered to pay family support under this section shall pay simple interest at the rate of 1% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month. If the party no longer has a current obligation to pay child support, interest at the rate of 1% per month shall accrue on the total amount of child support in arrears, if any. Interest under this section is in lieu of interest computed under § 807.01 (4), 814.04 (4), or 815.05 (8) and is paid to the department or its designee under § 767.57. Except as provided in § 767.57 (1m), the department or its designee shall apply all payments received for family support as follows:

add this → family support award cannot exceed % standards

Kahler, Pam

From: Braun, Rick
Sent: Tuesday, October 30, 2012 11:04 AM
To: Kahler, Pam
Subject: Child support legislation

Pam:

Just wondering where we're at with the child support bill.

Michael also asked if there was a way to get into the bill something that would add language in the law that the parent paying support shall have the right through discovery to verify the support is being used only for the support of the children.

Thanks,

Rick Braun
Office of Rep. Joel Kleefisch